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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/521,507

Filing Date: January 18, 2005

Appellant(s): HEWES ET AL.

Judith A. Szepesi
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed May 27th 2005 appealing from the Office action mailed December 26th 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-8, 12, 14-15, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Caswell U.S. Pat. No. 6,336,138 B1.

Regarding claim 1, Caswell discloses “a dialog designer” as a template which provides a designer a configuration interface to generate a service model, this provides the features (i.e. creation, scheduling, etc.) that the dialog designer provides (col. 3 ln. 35-58, col. 4 ln. 47-59, col. 9 ln. 31-36, 47-49, Fig. 9-12), “a dialog server” as application

or front-end servers (col. 6 ln. 65 – col. 7 ln. 13, Fig. 4), and “a message exchange” as an NFS service (col. 7 ln. 13-21, Fig. 4).

Regarding claim 2, Caswell discloses “wherein a plurality of organizations hierarchically organized can independently develop, test, execute, and analyze messaging programs” because the template disclosed may be configured for any one organization’s particular needs (col. 5 ln 63-67), also computation rules are disclosed which allow for analyzing (col. 5. ln 59-60).

Regarding claim 3, Caswell discloses “wherein the organizations are not messaging service providers” because it describes the system being used by an internet service provider (col. 5 ln 39-40).

Regarding claim 4, Caswell discloses “connected to a plurality of message service providers” because the system of Caswell is connected to authentication servers and mail servers which are capable of sending messages to users (Fig. 4).

Regarding claim 5, Caswell discloses “connected to the messaging service providers systems via a data network” as a network connection between the discovery agent / management system to the mail server (Fig. 7), “using a variety of messaging protocols” such as POP3 (Fig. 5).

Regarding claim 6, Caswell discloses "the message application server is connected to the organizations via a data network" as a network connection between the discovery agent / management system and the file servers of the ISP (Fig. 7).

Regarding claim 7, Caswell discloses "the messaging users use messaging devices using a variety of messaging protocols" as a user using e-mail to retrieve messages (col. 5 In. 55-57, col. 18 In 57-63, Fig. 5).

Regarding claim 8, Caswell discloses "the messaging programs and instructions are designed using a graphical user interface" as a configuration interface (col. 9 In. 47-49, Fig. 3 item 60).

Regarding claim 12, Caswell discloses "interface with the message application server via web service calls" as an ISP system which must communicate using application layer technologies such as HTTP, SMTP, etc. (col. 4 In 13-16).

Regarding claim 14, Caswell discloses "wherein the dialog server can access the messaging instructions from a remote computer system" as front-end servers connected to remote computer systems (Fig. 4).

Regarding claim 15, Caswell discloses "instruction, includes [...] logic primitives, [etc.] whereby any message program of arbitrary complexity can be developed" as servers capable of running complex or simple programs (col. 6 ln 66 – col. 7 ln 1, Fig. 4).

Regarding claim 17, Caswell inherently discloses "store messages into queues with flow control techniques" as any system using TCP will provide flow control.

3. Claims 18-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Gilchrist et al. U.S. Pat. No. 6,205,471 B1.

Regarding claim 18, Gilchrist discloses "designing the messaging program" as a user tailoring the framework to provide a mail system (col. 2 ln. 51-63), "selecting a segment for push programs" as a recipient list (Fig. 12), "selecting a program service address" (col. 17 ln 16-30, Fig. 12), "testing the messaging program" (col. 6 ln 45-48), "executing the messaging program" (col. 19 ln 10-23, Fig. 14), "users interacting with the messaging program" (Fig. 14), "storing the messaging users responses" (Fig. 8 item 44), "stopping the messaging program" as interrupting (col. 3 ln 16-20), and "analyzing the messaging program" by designing extensible functions which can be later configured depending on the needs of the messaging program (col. 6 ln 31-44).

Regarding claim 19, Gilchrist discloses "wherein the data captured as part of executing a messaging program is used in a subsequent messaging program" as an iterative design process, in such a process it is inherent that data captured or observations made will be used in the future (col. 6 ln. 45-46).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 9-10 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Caswell in view of Eggleston et al. Pat. No. 5,958.

Regarding claim 9, Caswell discloses "a data database" (col. 9 ln 21, Fig. 3 item 36), and "an address manager" as a management system (col. 9 ln 13-15, Fig. 3 item 56). Caswell does not disclose "an opt-out system", "a billing system" or a "message detail record database" for billing purposes, however Eggleston does teach "an opt-out system" as a user filter (col. 9 ln 27-29, Fig. 4 step 432), "a billing system" as a billing manager (col. 2 ln 5-12, Fig. 2 item 262), and a "message detail record database" capable of tracking billing events (col. 15 ln 25-31, Fig. 2 item 264).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Caswell with the filter and billing system of Eggleston. Eggleston teaches that motivation is to provide users and managers with effective means to control messages during a billing cycle (col. 2 ln 5-13).

Regarding claim 10, neither Caswell nor Eggleston specifically teach to use the data stored in the database in future programs however it is inherent that data collected will be used in the future and obvious to one of ordinary skill that the use may be for similar programs. The motivation to combine is the same as in claim 9.

Regarding claim 13, Caswell does not disclose "customer relationship management (CRM) systems" however Eggleston teaches this as a billing manager (col. 2 ln 5-12, Fig. 2 item 262).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Caswell with the billing manager of Eggleston. Eggleston teaches that motivation is to provide users and managers with effective means to control messages during a billing cycle (col. 2 ln 5-13).

6. Claims 11, 16 and 27 – 31, 40-41, and 46-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Caswell in view of Gilchrist et al. U.S. Pat. No. 6,205,471 B1.

Regarding claim 11, Caswell does not specifically disclose that "organization accesses the dialog designer using a web browser from a remote computer" however Gilchrist teaches that the messaging computer systems may receive data by well-known methods (col. 14 ln 20-25).

It would have been obvious to one of ordinary skill in the art at the time of the invention to use a web browser to access a remote computer. The motivation to combine Caswell with Gilchrist is to make a more efficient system.

Regarding claim 16, Caswell does not specifically disclose "dialog server maintains session state" however Gilchrist teaches a computer that can perform messaging tasks using multiple protocols including session based communication (col. 2 ln 11-29). It would have been obvious to use sessions to communicate the motivation is to provide more flexibility in the type of messaging programs.

Regarding claim 27, Caswell discloses receiving "a messaging device originated message" as mail servers connected to users (Fig. 4), "forwarding the messaging device originated message from the message exchange to a dialog server" as routing message to appropriate application (col. 6 ln. 65 – col. 7 ln. 13, Fig. 4), Caswell does not disclose the software based steps of (c) – (e) however these are taught by Gilchrist. Gilchrist teaches "looking up the appropriate session context [...] and the program

service address" as a email framework that can operate on multiple protocols (abstract, col. 2 ln 11-29, Fig. 21-23), "executing pull messaging program instructions [...] based on the session state" (col. 3 ln 21-35 and col. 17 ln 25-30), and "routing the messaging device originated message in the message exchange to the appropriate messaging service provider, and storing any message status delivery returned" (Fig. 14, 38). It would have been obvious to combine the steps of Gilchrist with Caswell, the motivation is to create a more flexible program.

Regarding claim 28, Caswell discloses "a client system" as an ISP (Fig. 4, 7), "a message service provider system" when an ISP is using the invention of Caswell to map several ISPs (Fig. 7), "a message application server in communication" as servers with at least NFS service interconnected by a network (col. 3 ln. 35-58, Fig. 9-12 , col. 6 ln. 65 – col. 7 ln. 21, Fig. 4), "client system is configured to interface with the message application server" (Fig. 4). Caswell does not specifically disclose client systems developing messaging applications and does not disclose "message application server is configured to determine and route the messages to the message service provider system regardless of the message service provider system's implemented messaging technology" however these are taught by Gilchrist as a email gateway that can accept multiple protocols (col. 2 ln 11-29) and an iterative development environment (col. 6 ln 14-53).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Caswell with Gilchrist. The motivation to develop programs using the iterative approach is to ensure they work properly.

Regarding claim 29, Caswell discloses "a dialog server" (col. 6 ln 65 – col. 7 ln 13).

Regarding claim 30, Caswell discloses "a message exchange" as a mail server (col. 7 ln 13-21, Fig. 4).

Regarding claim 31, Caswell discloses "a dialog designer" (col. 3 ln. 35-58, Fig. 9-12), "configured to provide an interface" (col. 4 ln 38-40).

Regarding claim 40, Caswell discloses "a plurality of messaging devices" as a plurality of users each with their own messaging device (Fig. 7), and "messaging service provide gateway communicatively connected to said messaging application server" as a network connection between the users and the server (Fig. 7).

Regarding claim 41, Gilchrist discloses an email gateway system capable accepting multiple protocols (col. 2 ln 11-15) this would include a system capable of supporting wireless devices.

Regarding claim 46, Caswell discloses "a graphical user interface (GUI) design tool" (col. 9 ln 46-51).

Regarding claim 47, a message application is interactive when a user receives a message and responds. Gilchrist teaches an email gateway that is capable of accepting responses from a user (Fig. 12) thus the message applications are inherently interactive.

Regarding claim 48, Caswell discloses "client interface component" as a GUI at an operator computing station (col. 9 ln 46-50), and "server interface component" which will run on the server (Fig. 7).

Regarding claim 49, Caswell discloses "dialog designer is further configured to facilitate reporting on message application transactions" as a sever which maintains a log of activity, this will facilitate reporting of all transactions (servers Fig. 7).

Regarding claim 50, Gilchrist discloses an email gateway that can recognize a message from a different protocol (col. 2 ln 13-15), thus support for “multimedia messaging applications” is inherent.

Regarding claim 51, Caswell does not specifically disclose that “client interface component is a web browser” however Gilchrist teaches that the messaging computer systems may receive data by well-known methods (col. 14 ln 20-25), this includes HTTP. It would have been obvious for one to use a web browser as an interface, the motivation is to make the program easier to use.

7. Claim 32-34, 42 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Caswell in view of Gilchrist and in further view of Eggleston.

Regarding claim 32, Caswell inherently discloses “an execution unit” as a processor within a computer (Fig. 4), “an application service system” as a service model that supports management functions (col. 3 ln 62 – col. 4 ln 3), “a user system” (Fig. 4, 7), “a dialog server in-queue to store messages” (col. 6 ln 66 – col. 7 ln 3, Fig. 3), “a monitoring unit” (col. 3 ln 62-66), “a dialog server database” (36 Fig. 3), “a dialog designer interface” (col. 9 ln. 47-49, Fig. 3 item 60), and “a message exchange” (mail server Fig. 4). Gilchrist discloses “a scheduler unit” (col. 19 ln 10-23, Fig. 14), “a session system” (col. 2 ln 26-29), “an application instruction unit” (Fig. 8), “a bulksend

unit" deliver method combined with recipient list (Fig. 12, 14), and "a message delivery status system" non delivery method (Fig. 38). Caswell and Gilchrist do not disclose the opt-out system or a log (database) for accounting purposes, however these are taught by Eggleston (col. 9 ln 27-29, Fig. 4 step 432) and (col. 15 ln 25-31, Fig. 2 item 264) respectively.

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the Caswell and Gilchrist with the features of Eggleston. The motivation is to enhance the messaging system by providing the billing feature, similar to claim 9.

Regarding claim 33, Caswell inherently discloses "an out queue" as the mail server would place outgoing messages in a queue until they are sent (Fig. 4), "an outgoing message router" (mail server Fig. 4), "an incoming message router" (mail server Fig. 4), "an address manager" DNS (col. 7 line 13-21), "a monitoring unit" (col. 5 ln 57-62), "a message exchange database" (74, 78 Fig. 4), "a message exchange message detail record database" (36, Fig. 3, col. 9 ln 18-21), "a dialog server interface" (60 Fig. 3), and "a dialog designer interface" (col. 3 ln 35-58). Gilchrist discloses "a plurality of outgoing handlers, each for a specific messaging technology" as object oriented email gateway that can recognize different protocols (col. 2 line 11-29), and "a plurality of incoming handlers" (col. 2 line 11-29). Caswell and Gilchrist do not disclose "a billing system" or "a billing MDR database" however these are taught by Eggleston

(col. 2 ln 5-12, Fig. 2 item 262) and (col. 15 ln 25-31, Fig. 2 item 264) respectively. The combination of Eggleston with Caswell and Gilchrist would have been obvious to one of ordinary skill in the art at the time of the invention, the motivation is similar to claim 32.

Regarding claim 34, Caswell does not specifically disclose "a (HTTP) interface" however Gilchrist teaches that the messaging computer systems may receive data by well-known methods (col. 14 ln 20-25), Caswell does disclose "interface to enable said client systems to automate access" (col. 3 ln 49-59), "a service layer" as application servers (col. 6 ln 67), "a dialog server interface" (col. 9 ln 46-50), "message exchange interface" (col. 9 ln 46-50), "dialog designer database" (col. 9 ln 17-22), "dialog designer data database" (36 Fig. 3). Caswell and Gilchrist do not disclose "message detail record database to store billing [...] information" however Eggleston teaches this (col. 15 ln 25-31, Fig. 2 item 264). The combination of Eggleston with Caswell and Gilchrist would have been obvious to one of ordinary skill in the art at the time of the invention, the motivation is similar to claim 32.

Regarding claim 42, Caswell and Gilchrist do not specifically disclose a "customer relationship management system" however Eggleston teaches this as a billing manager (col. 2 ln 5-12, Fig. 2 item 262). The combination of Eggleston with Caswell and Gilchrist would have been obvious to one of ordinary skill in the art at the time of the invention, the motivation is similar to claim 32.

Regarding claim 45, Caswell and Gilchrist do not specifically disclose "configured to manage service addresses and to perform message billing" however Eggleston teaches this as a billing manager (col. 2 ln 5-12, Fig. 2 item 262). The combination of Eggleston with Caswell and Gilchrist would have been obvious to one of ordinary skill in the art at the time of the invention, the motivation is similar to claim 32.

8. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gilchrist et al. U.S. Pat. No. 6,205,471 B1.

Regarding claim 20, Gilchrist discloses "wherein the segments are created from list data imported by the program designer into a data database" as a recipient list (Fig. 12) however Gilchrist does not specifically disclose creating segments from "results data generated by the execution of prior messaging programs" however this would have been obvious to one of ordinary skill in the art at the time of the invention.

It would have been obvious for the segments (recipient list) taught by Gilchrist (Fig. 12) to be created from data generated by the execution of prior messaging programs. The motivation is that if favorable replies or negative replies are received the segment (recipient list) may be changed accordingly to be more effective.

9. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gilchrist in view of Tucciarone et al. US2004/0122730 A1.

Regarding claim 21, Gilchrist does not specifically disclose “deliver coupons [...] to the messaging users” however Tucciarone teaches using electronic messaging to deliver coupons (pg. 19 Table A steps 22B-24C).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Gilchrist with the coupon feature from Tucciarone. The motivation is to fulfill customer requests using electronic messaging.

10. Claims 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gilchrist in view of Dattatri US2002/0049815 A1.

Regarding claim 22, Gilchrist discloses storing service events in a database (Fig. 8) however does not disclose storing “billable events”. Dattatri teaches using a database to hold billing information (paragraph 62 pg. 6-7)

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Gilchrist with Dattatri. The motivation is to bill users for the amount of messages.

Regarding claim 23, Gilchrist does not disclose the steps of billing for messages however Dattatri teaches “importing the message detail records” (paragraph 88), “rating

and billing said message detail records" (paragraph 88), and "generating organization invoices" (paragraphs 94-95).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Gilchrist with Dattatri. The motivation is to bill users for the amount of messages.

Regarding claim 24, Gilchrist does not disclose the steps of billing however Dattatri teaches "reconciling service provider invoices for messaging transport costs with service provider account payable reports" as billing for the cost of service (paragraphs 94-95).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Gilchrist with Dattatri. The motivation is to bill users for the amount of messages.

Regarding claim 25, Gilchrist does not disclose the steps of billing however Dattatri teaches "receiving message detail records" (paragraph 88), "importing the message detail records in the billing MDR database" (paragraph 88), "rating and billing the message detail records" (paragraph 88), "generating from the message detail records generated in the messaging service provider system service provider accounts payable reports" (paragraphs 94-95), and "reconciling the accounts payable reports [...]

with the accounts payable reports" as matching receipt of messages with billing (paragraph 62).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Gilchrist with Dattatri. The motivation is to bill users for the amount of messages.

11. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gilchrist in view of Eggleston.

Regarding claim 26, Gilchrist discloses "creating a segment" as a recipient list (Fig. 12), "starting a messaging program" (col. 19 ln 10-23, Fig. 14), "executing a bulksend in a dialog server which retrieves the messaging users messaging device address" (col. 17 ln 16-30, Fig. 12), "executing a messaging program instruction in the dialog server" it is inherent that program instructions will be executed when the messaging program is executed (Fig. 14), "routing the push message to a message exchange" (Fig. 10), and "storing any message status delivery returned" as handle non delivery method (Fig. 14). Gilchrist does not disclose "filtering out messaging device address of users that have opted-out" as in step (c) however Eggleston teaches "an opt-out system" as a user filter (col. 9 ln 27-29, Fig. 4 step 432).

It would have been obvious to combine Gilchrist with Eggleston, the motivation is to provide users and managers with effective means to control messages during a billing cycle (col. 2 ln 5-13).

(10) Response to Argument

B. Rejection I: Claims 1-8, 12, 14-15, and 17.

Applicant argues that Caswell does not disclose "a dialog designer configured to provide a user interface ... to allow for rapid messaging program creation, to provide the ability to select a type of messaging program ... to schedule the messaging program for execution ... to test the messaging programs, to provide reports ... on the messaging program" as recited by claim 1. This argument is not persuasive because Caswell does disclose "a dialog designer configured ... to allow for rapid messaging program creation" as generating a service model (col. 5 ln. 40-42) that provides an interface (dialog) to a designer for configuration (program creation) (col. 8 ln. 63 – col. 9 ln. 51), "to schedule the messaging program for execution" as a configuration where agents are scheduled for execution (col. 15 ln. 60), and "to test the messaging programs, to provide reports ... on the messaging programs" as an operational monitoring function (col. 3 ln. 66 – col. 4 ln. 3). Although Caswell is directed to creating a variety of services for an ISP it specifically gives an example of a Read Mail service (col. 5 ln. 45-57). There is no limiting definition in Applicant's specification that would preclude giving the term "messaging program" its broadest reasonable interpretation. Since email is the

electronic delivery of messages and the email service is clearly implemented using a program, it is certainly reasonable to consider it a messaging program. Thus, Caswell does teach a "dialog designer" that allows for the creation of a "messaging program" as recited by the claim.

Applicant has not argued that any of the features of the dependent claims 2-8, 12, 14-15, and 17 are distinguishable over Caswell. Since Caswell anticipates claim 1 as discussed above, it is submitted that Caswell also anticipates these dependent claims.

C. Rejection II: Claims 18 and 19.

Applicant argues that Gilchrist fails to disclose an organization's program designer designing a messaging program as recited in steps (a) – (e) of claim 18. This argument is not persuasive. Gilchrist does disclose these limitations as discussed in the rejection:

Regarding claim 18, Gilchrist discloses "designing the messaging program" as a user tailoring the framework to provide a mail system (col. 2 In. 51-63), "selecting a segment for push programs" as a recipient list (Fig. 12), "selecting a program service address" (col. 17 In 16-30, Fig. 12), "testing the messaging program" (col. 6 In 45-48), and "executing the messaging program" (col. 19 In 10-23, Fig. 14, 26).

Applicant argues the features cited in Gilchrist do not disclose the limitations of the claim because Gilchrist uses the term "framework" and the claim uses the term "program".

This argument is not persuasive because the terms framework and program are not mutually exclusive. Applicant argues the terms are not the same and quotes Gilchrist with adding emphasis to specific portions to make this point. However it is just as easy to emphasize the portions applicant did not, to suggest the converse.

Gilchrist discloses "the reader should note that one of the loosest definitions in the OO art is the definition of the word framework" (col. 5 ln. 61-64-66, Emphasis Added), and "... in general terms an OO framework can be properly characterized as a type of solution to a programming problem" (col. 6 ln. 14-16, Emphasis Added). Gilchrist is correct that there is fundamental difference between a framework and a basic programming solution (col. 6 ln. 16-18), but note that Gilchrist does not say there is a fundamental difference between a framework and all programming solutions. This is because a framework is a type of solution, since it is more complex than a basic solution, it would be more accurate to characterize it as an eloquent or elaborate solution.

Although Gilchrist uses the term framework, in light of the definition provided by Gilchrist one of ordinary skill in the art would reasonably interpret the term framework to mean a type of program (in this case, a program that lets a user develop other programs). The disclose of Gilchrist teaches using a framework (program) to create

message programs, and provides for executing and testing of those programs. Thus, Gilchrist anticipates claim 18.

Applicant has not argued that any of the features of dependent claim 19 are distinguishable over Gilchrist. Since Gilchrist anticipates claim 18 as discussed above, it is submitted that Gilchrist also anticipates this dependent claim.

D. Rejection III: Claims 9-10 and 13.

Applicant argues that Caswell and Eggleston do not teach or suggest each and every limitation of claim 1. This argument is not persuasive because as discussed above it is respectfully believed that Caswell alone discloses each and every limitation of claim 1. Thus the combination of Caswell and Eggleston also discloses each and every limitation of claim 1.

E. Rejection IV: Claims 11, 16, 27-31, 40-41 and 46-51.

1. Claim Group 1: Claims 11 and 16.

Applicant argues that Caswell and Gilchrist do not teach or suggest each and every limitation of claim 1. This argument is not persuasive because as discussed above it is respectfully believed that Caswell alone discloses each and every limitation of claim 1. Thus the combination of Caswell and Gilchrist also disclose each and every limitation of claim 1.

2. Claim Group 2: Claim 27.

Applicant argues that Caswell and Gilchrist do not describe or suggest steps (c) – (e) of claim 27. However it is not clear where in applicant's brief any reasons or facts are asserted for supporting the claim that Gilchrist does not disclose steps (c) – (d). Applicant's only argument is that the cited portion of Gilchrist does not disclose step (e), "routing the messaging device originated message in the message exchange to the appropriate messaging service providing, and storing any message status delivery returned by the message exchange". This argument is not persuasive. Gilchrist clearly discloses routing messages to the appropriate service provider as address resolution which results in message routing (col. 15 ln. 17 – col. 16 ln. 45, Fig. 11, 14) and storing message status such as a non-delivery status (col. 16 ln. 34-45 and Fig. 38, col. 39 ln. 35-63).

Applicant also argues that "Gilchrist does not disclose supporting any of the other messaging technologies taught in claim 27" (pg. 25) and therefore Caswell and Gilchrist do not teach or suggest each and every limitation of claim 27. This argument is also not persuasive. If applicant had bothered to read just one line before the list of technologies recited it would have been obvious that the transition "the message ... is of any one of a variety of messaging protocols " only requires one of the protocols listed. When a claim covers several structures or compositions, either generically or as alternatives, the claim is deemed anticipated if any of the structures or compositions within the scope of the

claim is known in the prior art (MPEP 2131). Since Gilchrist discloses one of the technologies (e-mail) it is sufficient to anticipate that portion of the claim.

3. Claim Group 3: Claim 28-31, 40-41, and 46-51.

Applicant argues that Gilchrist does not disclose "the client system is configured to interface with the message application server to enable the client system to develop, analyze, test, deploy, and monitor messaging application, the messaging applications to generate messages, receive messages from and send messages to the message service provider system" as recited in part in claim 28. This argument is not persuasive for the following reasons:

Examiner agrees that Gilchrist does not explicitly disclose "the client system is configured to interface with the message application server" however, Caswell discloses client systems connected with said message application server (Fig. 4) and thus discloses client systems that are interfaced with the message application server. Caswell generally describes a process of developing (col. 4 ln. 55-57) and monitoring (col. 3 ln. 66 – col. 4 ln. 3). Caswell also discloses a Read Mail service (col. 5 ln. 49) which is equivalent to a messaging program. Gilchrist more clearly discloses "enable the client system to develop, analyze, test, deploy" as an iterative development process (col. 6 ln. 45-46). It would have been obvious to modify Caswell with Gilchrist to improve the analyzing and testing of a program. The motivation for doing so is to reduce errors. Thus, the disclosures of Caswell and Gilchrist combined disclose and

teach a client interfacing with a messaging server to develop messaging applications as recited by claim 28.

Applicant's closing paragraph of this section refers to claims 34-41 and 44. However, only claims 40-41 are included in the heading for this section. Furthermore, claims 35-39 and 44 have been cancelled.

Applicant has not argued that any of the features of dependent claims 29-31, 40-41 and 46-51 are distinguishable over Caswell and Gilchrist. Since Caswell and Gilchrist disclose or teach claim 28 as discussed above, it is submitted that Caswell and Gilchrist also disclose or teach these dependent claims.

F. Rejection V: Claims 32-34, 42, and 45.

Applicant argues that Caswell, Gilchrist and Eggleston do not teach or suggest "the client system is configured to interface with the message application server to enable the client system to develop, analyze, test, deploy, and monitor messaging application, the messaging applications to generate messages, receive messages from and send messages to the message service provider system" as recited in part in claim 28. This argument is not persuasive because Caswell and Gilchrist teach or suggest every limitation of claim 28 as discussed above.

Applicant has not argued that any of the features of dependent claims 32-34, 42 and 45 are distinguishable over Caswell and Gilchrist. Since Caswell and Gilchrist

disclose or teach claim 28 as discussed above, it is believed Caswell and Gilchrist also disclose or teach these dependent claims.

G. Rejection VI: Claim 20.

Applicant argues that Gilchrist and knowledge in the art do not teach or suggest an organization's program designer designing a messaging program as recited in claim 18. This argument is not persuasive since Gilchrist alone discloses each and every limitation of claim 18 as discussed above.

H. Rejection VII: Claim 21.

Applicant argues that Gilchrist and Tucciarone do not teach or suggest an organization's program designer designing a messaging program as recited in claim 18. This argument is not persuasive since Gilchrist alone discloses each and every limitation of claim 18 as discussed above.

I. Rejection VIII: Claims 22-25.

Applicant argues that Gilchrist and Dattatri do not teach or suggest an organization's program designer designing a messaging program as recited in claim 18. This argument is not persuasive since Gilchrist alone discloses each and every limitation of claim 18 as discussed above.

Applicant has not argued that any of the features of dependent claims 22-25 are distinguishable over Gilchrist and Dattatri. Since Gilchrist discloses each and every limitation of claim 18, it is believed that Gilchrist and Dattatri also disclose or teach these dependent claims.

J. Rejection IX: Claim 26.

Applicant argues that Gilchrist and Eggleston do no teach or suggest each and every limitation of claim 26, specifically "filtering out the message device addresses of users that have opted out, the filtering out to result in the users that have opted out not receiving push messages". This argument is not persuasive because Eggleston in fact teaches filtering messages based on user selected criteria which results in the messages that are filtered not being sent (col. 9 ln. 27-31).

Applicant also argues that Eggleston does not teach a user having to choose between receiving no messages or receiving all messages (i.e. "opt-out") however this is not the case because the user defined filter as taught by Eggleston could be set up in such a manner that all messages are received or no messages are received (col. 8 ln. 14-55). The system of Eggleston is more advanced than a simple "opt-out" system. Rather, Eggleston allows a user to customize a filter which may result in the user receiving no messages, receiving all messages, or receiving some messages. Furthermore, Eggleston concerns an email system (col. 3 ln. 1-5). Addresses are inherent in email, therefore applicant's argument that Eggleston does not disclose "addresses" (emphasis added by applicant) is not persuasive.

Applicant's brief mistakenly refers to the Final Office Action as citing Gilchrist to support these features. This is incorrect. As discussed above Eggleston (col. 9 ln. 27-31 and col. 8 ln. 14-55) discloses these features, not Gilchrist. Thus applicant's discussion on pg. 35 about Gilchrist is irrelevant.

Conclusion

For at least the reasons discussed above, the Board should uphold the rejection of all pending claims.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Jason Recek/

Examiner, Art Unit 2142

August 1, 2008

/Andrew Caldwell/
Supervisory Patent Examiner, Art Unit 2142

Conferees:

/Andrew Caldwell/
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